ABDUL HAMID v. PUBLIC PROSECUTOR

[A. Cr. J. (Adams J.) November 27, 1961]

[Muar — Criminal Appeal No. 58 of 1961]

Road Traffic — Plying private vehicle for hire — Forfeiture — Evidence required to warrant conviction — Road Traffic Ordinance, 1958, ss.22, 74 and 92(2) and (4).

The defendant was charged and convicted under sections 92, 22(2) and 74 of the Road Traffic Ordinance, 1958 and the Magistrate further ordered the forfeiture of the car under section 92(4). On appeal it was argued, firstly, that the order for forfeiture was invalid because there was no evidence of any seizure by a Road Transport Officer under section 92(2) and secondly, that section 144 of the said Ordinance did not apply to an offence under section 22 and that as the prosecution had not produced the licence the defendant should not have been called to enter upon his defence.

Held: (1) before an order of forfeiture can be made under section 92(4), the record must clearly show that there has been a seizure by the Road Transport Officer and that the provisions of section 92(2) have been complied with. The production of the car at the hearing was sufficient evidence that it had in fact been seized;

(2) the onus of proof that a vehicle is properly licensed is on the person who alleges it. Here the car was produced before the Magistrate who could use his own eyes to see whether it was properly licensed.

Observations on procedure relating to forfeitures and the evidence that is necessary to warrant a conviction in similar cases.

Cases referred to:—

(1) *Mohamed Salleh* v. *Public Prosecutor* [1962] M.L.J. 6.

(2) *Gun Kim Luu* v. *Public Prosecutor* [1961] M.L.J. 35.

(3) *Public Prosecutor* v. *Chin Yoke* [1940] M.L.J. 47.

(4) *Khoo Teck Yam* v. *Public Prosecutor* [1955] M.L.J. 112.

CRIMINAL APPEAL.

T. Singam for the appellant.

Hamzah bin Dato Abu Samah (Deputy Public Prosecutor) for the respondent.

Adams J.: The defendant was charged with three charges as follows: firstly, driving a motor vehicle licensed as a private vehicle and using it as a public service vehicle contrary to section 92 of the Road Traffic Ordinance, 1958; secondly, for using the same vehicle while licensed as a private vehicle for another purpose when the fee chargeable in respect of a licence for that other purpose is higher than the fee chargeable in respect of the licence issued in respect of the vehicle contrary to section 22(2) and thirdly, driving a vehicle without there being in force in relation to the vehicle a policy of insurance against third party risks contrary to section 74.

I dismissed the appeal which was against the conviction and sentence on all three charges and also against the order of forfeiture made under section 92(4) of the Ordinance. I said I would give my reasons later.

The facts were that the defendant was found driving his motor vehicle with four passengers in it when he was stopped by a police officer. In view of the presumption under section 144(b) the learned Magistrate called on the defendant for his defence. The defendant and the passengers deposed that they were going to Singapore, that they were relatives of the defendant, they were going to meet some people returning from Mecca, that it was a free trip, and that they had not hired the defendant. The learned Magistrate refused to accept the evidence of the defendant and his witnesses on the ground that one of the witnesses said that he was not a relative of the defendant whereas the defendant had sworn that they were and the Magistrate came to the conclusion having seen the witnesses who were all Malays (as was the Magistrate) that they were not telling the truth and he convicted the defendant.

The drafting of the charge was attacked and it is quite true to say that the charge as drafted contained a great deal of unnecessary verbiage. But divested of the excess the charge was sound and it cannot be said that the defendant was misled in respect thereto. Charges however should be drafted as simply as possible setting out the offence with such particulars as is necessary to enable the defendant to understand with what he had been charged. A possible charge in a case of this nature would be:

> " That you at about 11 o'clock in the forenoon on the 15th day of June, 1961, at Jalan Temenggong Ahmad, Parit Jawa, in the District of Muar, in the State of Johore, being the driver of a Motor Vehicle No. AA.6466 used the said vehicle as a public service vehicle without there being in force in respect to the said vehicle a valid licence authorising such use an offence punishable under section 92 of the Road Traffic Ordinance, 1958."

On this charge the learned Magistrate having convicted the accused made an order of forfeiture under section 92(4) and it was argued that this forfeiture was invalid because there was no evidence of any seizure by a Road Transport Officer under section 92(2). An unreported judgment of Neal J. in Perak Criminal Appeal [1] was cited in support. I agree entirely with the judgment of Neal J. and the record must clearly show that there has been a seizure by a Road Transport Officer and that the provisions of section 92(2) have been complied with before any order under section 92(4) can be made. I do not think the learned Judge when he used the word "evidence" means that a Road Transport Officer has to go into the witness box to swear that he seized it. Section 114(e) of the Evidence Ordinance enables the Court to presume that official acts have been regularly performed. In the present case the record reads as follows:—

> " 5.7.61.
>
> Pro. informs Court that car AA.6466 (Hillman) is now in Police custody vide section 54 R.T.O.
>
> Asks that car be released to R.I.M.V.
>
> Car now tendered as Ex.P1.
>
> **Order:**
>
> Car AA.6466 to be released and handed over to R.I.M.V. Johore and to be produced before Court on 1.8.61."

I should point out here that the Court has no power to make this order, nor is there any need for it to do so. All the police have to do

is to notify the Road Transport Officer, who must then formally make the seizure. It is clear from the record that this was in fact done.

I would like to make it clear however that to make quite sure that the procedure laid down relating to forfeiture has been complied with, the evidence for the prosecution should include a statement by a police officer or other proper witness that the vehicle was seized by a Road Transport Officer. It should not be left to the Court to have to hunt through the record to see that the lawful procedure has been followed.

The car was subsequently produced at the hearing and I think therefore that there is sufficient evidence that the car had in fact been seized by a Road Transport Officer when it was handed over to them pursuant to the request of the Police on the 5th July.

Mr. Singam also argued that the *obiter dictum* of Ong J. in *Gun Kim Luu* v. *Public Prosecutor* [2] was in error and that following the unreported judgment of Neal J. above referred to forfeiture was not mandatory under section 92(4). With that proposition I also respectfully agree but as Ong J. has pointed out this is a most serious offence and its consequences may be disastrous to anybody injured by a vehicle being so used, and in default of very special circumstances Magistrates may well decide after having considered the matter judicially that a proper order under section 92(4) in these cases would be one of forfeiture.

Because these cases are so serious and because they are so difficult to detect they should be thoroughly investigated and carefully prosecuted. In *Gun Kim Luu's* case the police had kept watch on the vehicle over a period of time and had gathered evidence which was admissible under section 15 of the Evidence Ordinance which showed quite conclusively that the defendant had been plying for hire and I think it very desirable that evidence of this nature should be produced in all cases of this nature. Such evidence is always available since the police, I am quite certain, would never stop a private vehicle at random merely because it had more than one person in it and in my opinion evidence of previous instances should be given. It was in fact available in this case because when I came to consider the propriety of the Magistrate's order of confiscation I called Sulong bin Ngah, P.C. 11234 who had received instructions to keep an eye on the vehicle over the last month or so and that it was as a result of 2 months of observation that led him to stop the vehicle on the 5th of June. I considered therefore that the defendant in this case was a habitual offender and therefore I confirmed the order of forfeiture.

On the second charge Mr. Singam argued that section 144 of the Road Traffic Ordinance, 1958 did not apply to an offence under section 22 and that as the prosecution had produced no licence the defence should not have been called on this charge. But the onus of proving that a vehicle is properly licensed lies on the person who alleges it. (See section 106 of the Evidence Ordinance and my judgment in Muar Criminal Appeal 28 of 1961 following the judgments in *Public Prosecutor* v. *Chin Yoke* [3] and *Khoo Teck Yam* v. *Public Prosecutor* [4]). In any event the car was produced before the Court and the learned Magistrate could use his own eyes to see whether it was properly licensed or not.

The same consideration arises in respect of the third charge.

Appeal dismissed.

Solicitors: *Sault, Keith Sellar & Co.*

JABOL v. MURUAN & ANOR.

[O.C.J. (Adams J.) December 2, 1961]

[Muar — Civil Suit No. 2 of 1961]

Land Laws — Joint ownership of land — Sale during Japanese occupation — Conveyance unregistered — Rectification of Register under s.42 of Johore Land Enactment — Whether claim of purchaser could be enforced against rectified register.

The plaintiff in 1943 bought the whole of the interests of two joint owners in a piece of land. A transfer was executed but it was not registered. The plaintiff entered into possession of the land. After the war, one of the two joint transferors applied under section 42 of the Johore Land Enactment for the register to be rectified to show her and her son as joint owners of the property. Following a sketchy enquiry by the Collector, the register was so rectified. The other joint transferor could not be traced. Meanwhile, plaintiff had sold a half-share in the property to a Chinese who was not a party to these proceedings. The plaintiff now sought a declaration that he was entitled absolutely to an undivided half-share in the property.

Held: there was evidence of an out and out sale of the property to the plaintiff. The enquiry held by the Collector had not delved into several matters of importance and it could not support the rectification of the register as against the claim of the plaintiff, and consequently plaintiff was entitled to the declaration he sought.

ACTION.

K. N. Stoner for the plaintiff.

Defendants in person.

Cur. Adv. Vult.

Adams J.: This is an action in which the plaintiff seeks a declaration that he is entitled absolutely to an undivided half share in land held under S.S. No. 742/17 situate in Mukim Sri Gading VIII in the District of Batu Pahat and held under A.O. No. 3559, various other declarations which are necessary and the usual prayer for further and other relief.

The evidence of Inche Isnain bin Haji Ma'arof, the Asst. Collector of Land Revenue, Batu Pahat, shows that this piece of land is in extent about 5 acres and it is not disputed that on the 11th June, 1936, the land stood in the joint names of Siti Hadijah bte. Talib and Masuan or Masuran bin Talib. He said the first name was difficult to read but it is clearly shown in 1954 when the transfer of one of the undivided shares was made to Tor Cheng Teng that the remaining owner was Masuan bin Talib. There had been no dealings with the land in the